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Paper No. 5

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**DEC 17 2003**

**OFFICE OF PETITIONS**

In re Application of :  
Savard et al. :  
Application No. 09/988,475 :  
Filed: November 20, 2001 :  
Title of Invention: :  
MANEUVERABLE AND ADJUSTABLE :  
LAWN MOWER HAVING AN EDGING- :  
TRIMMING UNIT :

This is a decision on the petition under 37 CFR 1.137(a), filed December 1, 2003, to revive the above-identified application.

The petition is **DISMISSED**.

Any further petition to revive the above-identified application (under 37 CFR 1.137(a)), must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Request for Reconsideration of Petition under 37 CFR 1.137", and be addressed to Petitions Attorney Derek L. Woods. This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely reply to the non-final Office action, mailed January 15, 2003. The Notice set a statutory period for reply of three (3) months. Extensions of time under 37 CFR 1.136(a) were available. No reply having been received, the above-identified application became abandoned April 16, 2003. A Notice of Abandonment was mailed on September 11, 2003.

**Petition under 37 CFR 1.137(a) for unavoidable abandonment**

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a

notice of appeal and the requisite fee; a continuing application; an amendment or request for reconsideration which *prima facie* places the application in condition for allowance, or a first or second submission under 37 CFR 1.129(a) if the application has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 USC 120, 121 and 365(c); (2) the petition fee as set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c). The instant petition lacks items (1) and (3).

#### Applicant's Assertion

Applicant asserts that a timely reply was filed via facsimile transmission on April 14<sup>th</sup>, 2003. Applicant further avers receipt of confirmation of a successful transmission "from the fax machine." *Petition* at p.3. Applicant further avers that, once he was informed that the facsimile transmission had not been received, he sent records of the facsimile transmission along with a signed certificate of transmission and a resend of of [their] original Office Action reply to fax number 703-872-9302. *Id.* No copies of the putative facsimile transmission were filed with the instant petition.

Initially it is noted that, when the documents were not received by the maximum extendable period for reply, the application became abandoned. Once the application became abandoned, subsequent filings of the documents were inadequate to revive the application, and a petition for revival was required.

#### Analysis of the instant petition

As to item (1), Applicant has not submitted a reply to the January 15, 2003 Office action. Applicant must submit a reply to the Office action as part of the requirement for granting a petition under 37 CFR 1.137.

As to item (3), Applicant has not provided an adequate showing of unavoidable delay. Petitioner is advised that there are three provisions wherein this Office will consider correspondence as being timely filed. The first method, applicable here<sup>1</sup>, is under 37 CFR 1.8, which provides that

correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to the expiration of the set period of time by being:

(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage first class mail; or

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

37 CFR 1.8.

#### Conclusion

If Applicant has complied with one of the three methods wherein this Office considers correspondence as being timely filed as

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<sup>1</sup>The other two methods are under 37 CFR 1.10, which provides for the filing of papers and fees by "Express Mail", and under section 503 of the Manual for Patent Examining Procedure ("MPEP"), by enclosing with the paper a self-addressed postcard specifically identifying the item.

set out above, Applicant should submit such evidence in a renewed petition.

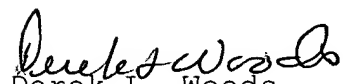
Further correspondence with respect to this matter should be addressed as follows:

By mail:           Commissioner for Patents  
                    PO Box 1450  
                    Alexandria, VA 22313-1450

By FAX:           (703) 872-9306  
                    Attn: Office of Petitions

By hand:           2201 South Clark Place  
                    Customer Window  
                    Crystal Plaza Two, Lobby Room 1B03  
                    Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to the undersigned at 703-305-0014.

  
Derek L. Woods  
Petitions Attorney  
Office of Petitions